

REMARKS

Reconsideration and withdrawal of the rejections of the Office Action are respectfully requested in view of the amendments and remarks herein.

THE ART REJECTIONS ARE OVERCOME

Claims 1-17 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Woldhuis (EP 0 403 030). Claims 1-44, 47 and 49 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Woldhuis (EP 0 403 030). The rejections are respectfully traversed and will be addressed together.

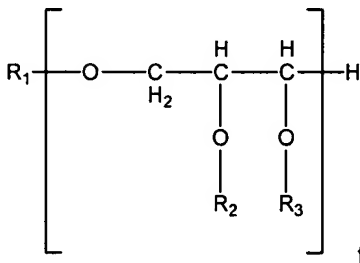
A two-prong inquiry must be satisfied in order for an anticipation rejection to stand. First, the prior art reference must contain all of the elements of the claimed invention. *See Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990).

In addition, Applicants respectfully assert that in order to ground an obviousness rejection, there must be some teaching which would have provided the necessary incentive or motivation for modifying the reference's teaching. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (B.P.A.I. 1993). Further, "obvious to try" is not the standard under 35 U.S.C. §103. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). And as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification." Also, the Examiner is respectfully reminded that for the Section 103 rejection to be proper, both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure. *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

The Office Action alleges that Woldhuis "discloses a coating for cheese made aof wax and a wax-like fat of the composition of the claims which was found to prevent or reduce the movement of water from the product upon application to cheese. The Office Action additionally states that although "branched fatty acids are not mentioned, it would have been obvious to expect branched and straight chain fatty acids to be included in a fatty acid of a chain length of

more than 4." Office Action at 2. Applicants respectfully assert that Woldhuis fails to provide all of the elements of the claimed invention

The present claims are directed towards a foodstuff "comprising a first food material and a second food material wherein the first food material is coated with a composition comprising (i) a wax in an amount of 2 to 50 wt. % based on the composition; (ii) a compound in an amount of 50 to 98 wt. % based on the composition, having the formula



...such that the composition prevents or reduces movement of water from one food material to the other" (emphasis added).

Thus, the present invention requires a foodstuff with two food material layers and a composition between these two layers. In contrast, Woldhuis discloses a single food material, i.e. cheese, which is coated on its outside with a wax layer. Applicants respectfully submit that there is no disclosure or suggestion in Woldhuis of providing the composition in a foodstuff comprising more than one food material such that the composition prevents or reduces movement of water from one food material to the other.

As Woldhuis contains no teaching or disclosure of using such a composition to separate two food materials of a single foodstuff, Woldhuis thereby fails to recite each and every element of the claims, and the rejection therefore cannot stand.

The Office Action additionally alleges that all of the pending claims are obvious over the disclosures in Woldhuis. However, Applicants note that Woldhuis relates specifically to optimizing the properties of a composition for coating the outside of cheese.

As discussed above, there is no teaching or suggestion in Woldhuis to provide a flexible moisture barrier for multi-layered foodstuffs which is imperceptible to the consumer while functioning to prevent or reduce the movement of water between the layers of the foodstuff.

Indeed, the coating protection discloses in Woldhuis is a thick, wax-like coating (e.g. 28 to 34 grams of coating material on a 1.8 to 1.9 kilogram cheese, (see Woldhuis, page 11, table E) which would not be appropriate as a barrier system that is imperceptible to the consumer.

Furthermore, Woldhuis teaches that it is important for the coating to "acquire a rigid structure" (see Woldhuis, page 3, line 55). Again, such a requirement would not result in a barrier that is imperceptible to the consumer. Woldhuis also discloses that polymer materials such as plastics may be added to the coating mixtures in order to improve cohesion, viscosity and surface characteristics (see Woldhuis, page 3, line 58 to page 4, line 5). These surface characteristics are particularly important to render the layer resistant to damage during the mechanical operations after applying the coating to the cheese (see Woldhuis, page 10, lines 47 to 50). Clearly, such teaching suggests an inedible coating and lead away from the present invention. One of skill in the art would not be led to adapt such a hard, thick coating that contains plastics for use in a multilayer foodstuff where the imperceptibility of the layer is equally important to its functionality as a moisture barrier.

Accordingly, Applicants respectfully submit that Woldhuis neither teaches or suggests a foodstuff according to the present invention that comprises a first food material and a second food material wherein the first food material is coated with a composition such that the composition prevents or reduces movement of water from one food material to the other. Furthermore, Applicants respectfully submit that one of skill in the art would not be motivated to look to a composition using a thick wax-like coating for cheese (such as in Woldhuis) when looking for a thin yet flexible moisture barrier for foodstuffs. And, even if one of skill in the art did look to Woldhuis for guidance, one would not arrive at the invention as presently claimed.

Therefore, as Woldhuis neither teaches nor suggests a composition for coating a food material in a foodstuff comprising multiple food materials, wherein the movement of water from one food material to the other is reduced or prevented, the obviousness rejections cannot stand.

For all of the reasons above, the rejections based on Woldhuis are improper. Woldhuis neither recites all of the elements of the claimed invention, nor motivates one of skill in the art to modify Woldhuis to arrive at the present invention. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §§ 102 and 103 are respectfully requested.

REQUEST FOR INTERVIEW

If any issue remains as an impediment to allowance, an interview with the Examiner and her supervisor, is respectfully requested, prior to issuance of any paper other than a Notice of

Allowance; and, the Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION

In view of the remarks herewith, the application is in condition for allowance. Reconsideration and withdrawal of the rejections of the application, and prompt issuance of a Notice of Allowance, are respectfully requested.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: Thomas J. Kowalski by Angela M. Collison
Thomas J. Kowalski
Reg. No. 32,147
Angela M. Collison
Reg. No. 51,107
Tel.: (212) 588-0800
Fax.: (212) 588-0500